he receives the funds; and to be consistent the court would have to go so far as to hold that even if the defendant had actually and in good faith repaid the principal to the trustee he would still be liable to the *cestui*. This is introducing a new element into the law of constructive trusts, which has heretofore limited the liability of a constructive trustee acting in good faith to the amount of benefits actually received. *Florence, etc., Co.* v. *Zeigler*, *supra*. Furthermore the contention is unsound that "an act that is criminal and void cannot be said to be founded upon good faith." The term good faith as used in this class of cases means ignorance of the beneficiary's equity, and no amount of criminality on the defendant's part can transform this ignorance into fraudulent knowledge. Although the reasoning of the court is careless, the result may well be beneficial in discouraging bucket shops. The actual decision however may be supported either on the doctrine of *Rapp* v. *Latham*, *supra*, or possibly by construing each repayment of so-called "profits" as a closing of one transaction, and a reinvestment of the original sum advanced, and the latter would therefore represent the actual benefit to the defendant. The court appealed from gave judgment in favor of the plaintiff for the amount of the margins less the amount returned to the trustee. On the whole, this decision seems more equitable than that of the upper court, and more in accord with the general rule in regard to constructive trustees.

COMPULSORY PILOTAGE. — It is by no means settled what effect statutes requiring the employment of licensed pilots have upon the liability of the owner for the negligence of such pilots. In a recent case where the defendant's vessel, while under the command of a New York licensed pilot and wholly through his fault collided with a pier owned by the plaintiff, the court held that the defendant was not liable in an action at common law, upon the ground that he was not personally at fault and that, as the employment of the pilot was compelled by the New York statute, the defendant could not be made responsible as principal. *Homer Ramsdell Co.* v. *La Compagnie Générale Transatlantique*, 182 U. S. 406. This result in an action at law seems obviously correct. Yet the injured party may also have alternative remedies in admiralty, and since his rights are then governed by the principles of maritime law, it is by no means necessary that the same result should be reached. A libel *in rem* is based upon the distinct conception that the right to redress is against the ship itself; in other words that the ship is the offending person regardless of the fact under whose control it was at the time of the collision. As culpability may thus be fixed upon the ship it has consequently been held in the United States that a libel *in rem* will be sustained under such circumstances. *The China*, 7 Wall. 53. In England, after many conflicting decisions the opposite conclusion has been reached. *The Halley*, L. R. 2 P. C. 193. Although perhaps a trifle harsh the American rule is a logical outcome of the principles of maritime law; it is furthermore supported by the law of continental Europe. 5 LYON-CAEN ET RENAULT, DROIT COMMERCIAL, §§ 190, 190 bis. In the remaining alternative open to one injured under such circumstances — a libel *in personam* against the owner — the peculiar doctrine which allows recovery where the ship is libelled *in rem* can have no application, and the same result should be reached as in an action at law. See CURTIS, MERCHANT SEAMEN, 196.

As to what constitutes compulsory employment however, the provisions of the statutes vary so greatly that no uniform rule can be deduced from the cases. Thus a New York statute, providing that any unlicensed person piloting a vessel to or from the port of New York shall be deemed guilty of a misdemeanor punishable by fine or imprisonment, has been held to make the pilotage compulsory. *The China*, *supra*. The Massachusetts statute, on the other hand, provides for a forfeiture of the whole pilotage fees if a tender of services is refused, and that of Louisiana inflicts a penalty of one half the fees; both statutes have been regarded in *dicta* as not compulsory. *Martin* v. *Hilton*, 9 Met. (Mass.) 371 ;. *The Merrimac*, 14 Wall. 199. The same result was reached under a Pennsylvania statute by which a master is "required and obliged" to employ a pilot or forfeit one half the fees to a charitable organization. *Flanigen* v. *Washington Ins. Co.*, 7 Pa. St. 306. In England the forfeiture of the fees is generally held to make the pilotage compulsory. *The Maria*, 1 W. Rob. 95. Yet curiously enough a penalty of double the fees has been interpreted in the opposite. *Attorney-General* v. *Case*, 3 Price 302. A vague distinction has been attempted in these cases between the forfeiture of pilotage fees and a "penalty." STORY, AGENCY, 2nd ed., § 456a. It is impossible from such a conflict to determine a satisfactory rule; it seems, however, that American courts do not consider a provision as obligatory unless its breach is punishable as a misdemeanor. Certainly the interpretation of the Pennsylvania statute is an indication of such an intention.

RECENT CASES.

AGENCY — COMPULSORY PILOTAGE — NEGLIGENCE OF PILOT. — The defendant's vessel, under command of a licensed pilot, collided with the plaintiff's pier as a result of the pilot's negligence. The latter was employed under a New York statute which the court interpreted as compelling the employment of a pilot. The plaintiff sued for injury to his property. *Held*, that the defendant is not liable. *Homer Ramsdell Co.* v. *La Compagnie Générale Transatlantique*, 182 U. S. 406. See NOTES, p. 405.

AGENCY — MASTER AND SERVANT — INTENTIONAL ACT OF SERVANT. — A push-car belonging to a railroad company was in charge of a foreman who lent it after the day's work to X for the latter's own use. The plaintiff, while lawfully crossing the track, was injured by the negligence of X in running the push-car. *Held*, that the company is liable. *Erie R. R. Co.* v. *Salisbury*, 50 Atl. Rep. 117 (N. J., C. A.).

The act of the foreman was not merely a performance of the company's business in an irregular and unauthorized way; it clearly was entirely outside the scope of his employment, so that the company could not be held liable for the consequences of this as an affirmative act. *Robinson* v. *McNeill*, 18 Wash. 163; *cf. Fiske* v. *Enders*, 47 Atl. Rep. 681. In certain classes of cases, however, the master is under a duty to prevent certain things from happening, and if the servant to whom that duty is delegated, himself wrongfully causes one of those things to happen, the master may be held responsible, not for the doing of the act by the servant, but for the failure of the servant to prevent its being done. On this principle a railway company is liable for a wilful assault on a passenger by a train hand. *White* v. *Norfolk, etc., R. R. Co.*, 115 N. C. 631. The doctrine applies to the custody of dangerous instruments such as torpedoes. *Pittsburgh, etc., Ry. Co.* v. *Shields*, 47 Oh. St. 387. The principal case might be supported on this basis, but the doctrine has never been applied to the custody of non-dangerous instruments, and a closely analogous case held very reasonably that a push-car belongs to the latter class. *Branch* v. *International, etc., Ry. Co.*, 92